

**ASSEMBLY BILL**

**No. 459**

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**Introduced by Assembly Member Bonnie Lowenthal**

February 24, 2009

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An act to amend Sections 2103, 2104, 2106, and 2107 of the Family Code, relating to dissolution.

LEGISLATIVE COUNSEL'S DIGEST

AB 459, as introduced, Bonnie Lowenthal. Dissolution: disclosure.

Existing law requires each party to a proceeding for dissolution of marriage or legal separation of the parties to serve on the other party a preliminary declaration of disclosure of assets, as specified, and a final declaration of disclosure, as specified, unless service of the final disclosure is waived. Existing law requires each party to serve a preliminary declaration of disclosure after or concurrently with service of the petition for dissolution or nullity of marriage, or legal separation of the parties. If a party fails to serve a preliminary or final declaration of disclosure, as specified, or fails to provide information required in those declarations with sufficient particularity, if the other party has served the respective declaration of disclosure, and if the noncomplying party also fails to comply with a request for the preparation of the appropriate declaration of disclosure or further particularity, existing law authorizes the complying party to file a motion to compel a further response or for an order preventing the noncomplying party from presenting evidence on issues that should have been covered in the declaration of disclosure.

Existing law generally prohibits entry of judgment with respect to the parties' property rights unless each party, or the attorney for that party, has executed and served a copy of the final declaration of

disclosure and current income and expense declaration. Existing law requires a court to set aside a judgment when the parties have failed to comply with all disclosure requirements, as specified.

This bill would revise the requirement to serve the disclosure to each party to instead require that the disclosure be served on each party who has appeared in the proceeding. The bill would also add, as an additional option that a complying party may pursue if the noncomplying party fails to comply with the request described above, the option to file a motion showing good cause to grant the complying party's voluntary waiver of receipt of the noncomplying party's disclosure, as specified. If that motion is granted, the bill would require the court to set aside a judgment only at the request of the complying party. The bill would make related and conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 2103 of the Family Code is amended to  
2 read:

3 2103. In order to provide full and accurate disclosure of all  
4 assets and liabilities in which one or both parties may have an  
5 interest, each party ~~to~~ *who has appeared in* a proceeding for  
6 dissolution of the marriage or legal separation of the parties shall  
7 serve on the other party a preliminary declaration of disclosure  
8 under Section 2104 and a final declaration of disclosure under  
9 Section 2105, unless service of the final declaration of disclosure  
10 is waived pursuant to Section 2105 or 2110, and shall file proof  
11 of service of each with the court.

12 SEC. 2. Section 2104 of the Family Code is amended to read:

13 2104. (a) ~~After~~ *Except by court order for good cause, as*  
14 *provided in Section 2107, after* or concurrently with service of the  
15 petition for dissolution or nullity of marriage or legal separation  
16 of the parties, each party shall serve on the other party a preliminary  
17 declaration of disclosure, executed under penalty of perjury on a  
18 form prescribed by the Judicial Council. The commission of perjury  
19 on the preliminary declaration of disclosure may be grounds for  
20 setting aside the judgment, or any part or parts thereof, pursuant  
21 to Chapter 10 (commencing with Section 2120), in addition to any

1 and all other remedies, civil or criminal, that otherwise are available  
2 under law for the commission of perjury.

3 (b) The preliminary declaration of disclosure shall not be filed  
4 with the court, except on court order; ~~however,~~ *However,* the  
5 parties shall file proof of service of the preliminary declaration of  
6 disclosure with the court.

7 (c) The preliminary declaration of disclosure shall set forth with  
8 sufficient particularity, that a person of reasonable and ordinary  
9 intelligence can ascertain, all of the following:

10 (1) The identity of all assets in which the declarant has or may  
11 have an interest and all liabilities for which the declarant is or may  
12 be liable, regardless of the characterization of the asset or liability  
13 as community, quasi-community, or separate.

14 (2) The declarant's percentage of ownership in each asset and  
15 percentage of obligation for each liability where property is not  
16 solely owned by one or both of the parties. The preliminary  
17 declaration may also set forth the declarant's characterization of  
18 each asset or liability.

19 (d) A declarant may amend his or her preliminary declaration  
20 of disclosure without leave of the court. Proof of service of any  
21 amendment shall be filed with the court.

22 (e) Along with the preliminary declaration of disclosure, each  
23 party shall provide the other party with a completed income and  
24 expense declaration unless an income and expense declaration has  
25 already been provided and is current and valid.

26 SEC. 3. Section 2106 of the Family Code is amended to read:

27 2106. Except as provided in subdivision (d) of Section 2105  
28 ~~or in~~, Section 2110, *or absent good cause as provided in Section*  
29 *2107*, no judgment shall be entered with respect to the parties'  
30 property rights without each party, or the attorney for that party  
31 in this matter, having executed and served a copy of the final  
32 declaration of disclosure and current income and expense  
33 declaration. Each party, or his or her attorney, shall execute and  
34 file with the court a declaration signed under penalty of perjury  
35 stating that service of the final declaration of disclosure and current  
36 income and expense declaration was made on the other party or  
37 that service of the final declaration of disclosure has been waived  
38 pursuant to subdivision (d) of Section 2105 or in Section 2110.

39 SEC. 4. Section 2107 of the Family Code is amended to read:

2107. (a) If one party fails to serve on the other party a preliminary declaration of disclosure under Section 2104 or a final declaration of disclosure under Section 2105, or fails to provide the information required in the respective declarations with sufficient particularity, and if the other party has served the respective declaration of disclosure on the noncomplying party, the complying party may, within a reasonable time, request preparation of the appropriate declaration of disclosure or further particularity.

(b) If the noncomplying party fails to comply with a request under subdivision (a), the complying party may do ~~either one or both~~ *more* of the following:

(1) File a motion to compel a further response.

(2) File a motion for an order preventing the noncomplying party from presenting evidence on issues that should have been covered in the declaration of disclosure.

(3) *File a motion showing good cause for the court to grant the complying party's voluntary waiver of receipt of the noncomplying party's preliminary declaration of disclosure pursuant to Section 2104 or final declaration of disclosure pursuant to Section 2105. The voluntary waiver does not affect the rights enumerated in subdivision (d).*

(c) If a party fails to comply with any provision of this chapter, the court shall, in addition to any other remedy provided by law, impose money sanctions against the noncomplying party. Sanctions shall be in an amount sufficient to deter repetition of the conduct or comparable conduct, and shall include reasonable attorney's fees, costs incurred, or both, unless the court finds that the noncomplying party acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(d) ~~If~~ *Except as otherwise provided in this subdivision, if* a court enters a judgment when the parties have failed to comply with all disclosure requirements of this chapter, the court shall set aside the judgment. The failure to comply with the disclosure requirements does not constitute harmless error. *If the court granted the complying party's voluntary waiver of receipt of the noncomplying party's preliminary declaration of disclosure pursuant to paragraph (3) of subdivision (b), the court shall set aside the judgment only at the request of the complying party.*

1     (e) Upon the motion to set aside judgment, the court may order  
2     the parties to provide the preliminary and final declarations of  
3     disclosure that were exchanged between them. Absent a court order  
4     to the contrary, the disclosure declarations shall not be filed with  
5     the court and shall be returned to the parties.

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